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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1094/2016

KUNDAN LAL

..... Petitioner

Through Mr. Awadhesh Kumar, Advocate with
petitioner-in-person.

versus

SUDHIR YADAV AND ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.11.2016

CM No. 40049/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 1094/2016 and CM No. 40050/2016

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 10.05.2016 by which the application filed under Order 6 Rule 17 CPC filed by respondent No.1/plaintiff was allowed.
2. Though the copy of the plaint is not filed, however as per record, respondent No.1 has filed the suit for partition and permanent injunction against the petitioner and other respondents in respect of the property comprising 950 sq. yards being Khasra No. 105/134 situated at Village Pandwala Kalan, New Delhi.

3. In the written statement, the petitioner who is defendant No.1 before the trial court has stated that the property has fallen to his share in 1981 during the course of oral partition/settlement of joint family properties between the petitioner and his brothers during the lifetime of their father. It is urged that since then the petitioner has been occupying the whole portion of the said built up property.

4. By the present application filed under Order 6 Rule 17 CPC what respondent No.1 wanted to add was that during the pendency of the suit, Master Mahinder Singh i.e. plaintiff No. 2 before the trial court has attained the age of majority and on 23.01.2008, he has executed a sale deed in favour of respondent No.1 in respect of his share of the suit property. It was averred that this sale deed dated 23.01.2008 was executed subsequent to the filing of suit and as such, the said sale deed and the mutation done in the revenue record is necessary to be brought on record. Hence, para 6 of the plaint was sought to be amended adding this fact.

5. The trial court vide impugned order noted that by virtue of the present application, the share of the petitioner as claimed by respondent No.1 does not get disturbed. On the question of delay, the trial court noted that the sale deed is of 2008 and the application has been filed only in 2014, however, it noted that the petitioner can be compensated by way of costs. The trial court also noted that the evidence of respondent No. 1 has commenced but cross-examination has yet not concluded and hence the petitioner/other respondents can be compensated by cost for the delay. Noting that the suit is for partition and the proposed amendment does not change the nature of the suit, the trial court allowed the application subject to costs of Rs.3,000/- to be paid to the petitioner and Rs.4000/- to be paid to

the other respondents.

6. Learned counsel appearing for the petitioner has vehemently argued that the plaintiff/respondent No.1 has no title to the suit property and the question of having obtained a registered deed by Sh.Mahinder Singh in favour of Sh.Sudhir Yadav would not arise. He submits that the amendment causes prejudices to the petitioner as respondent No.1 has no right, title or interest in the suit property. It is submitted that by introducing the deed, the petitioner would also have to seek a remedy of declaration that the deed is void.

7. I may note the powers of this court in exercise of its jurisdiction under Article 227 of the Constitution. In ***Surya Dev Rai vs. Ram Chander Rai & Ors (2003) 6 SCC 675***, the Supreme Court concluded as follows:-

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the

rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking

certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

8. In the facts and circumstances of this case, I am unable to hold that the trial court has acted in disregard of law, the rules and procedures or that the jurisdiction has been exercised which caused failure of justice or grave injustice was occasioned.

9. In my opinion, the proposed amendment does not in any manner change the nature of the suit. As the events which are based on a registered deed are sought to be placed on record, the amendment would be necessary. At this stage of amendment, the issue of merits of the case of the defendant would not be relevant. I see no reason to interfere with the order passed by the trial court in exercise of powers under Article 227 of the Constitution of India.

10. There is no merit in the present petition. Accordingly, the present petition along with all pending applications stands dismissed.

JAYANT NATH, J

NOVEMBER 09, 2016

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